

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CRAIG PETERS, an individual,

Plaintiff,

vs.

ARAMARK UNIFORM and APPAREL,  
INC., a Delaware corporation, DONALD G.  
KLAUS, an individual,

Defendants.

3:04-cv-00089-LRH (VPC)

ORDER

Presently before the court is Plaintiff Craig Peters motion for reconsideration (#39<sup>1</sup>) brought pursuant to Federal Rule of Civil Procedure (FRCP) 60(b)(1). Defendants Aramark Uniform and Apparel, Inc. and Donald Klaus have filed an opposition (#40) to which Plaintiff has replied (#41).

Plaintiff seeks reconsideration on the ground that the court's previous order was the result of mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b)(1). Specifically, Plaintiff argues the court misunderstood his argument concerning Defendants' "loss and ruin" policy and that the court did not see evidence related to Plaintiff's workers compensation leave. The court has reviewed Plaintiff's arguments and finds them unpersuasive. The court fully considered all evidence and understood Plaintiff's arguments. There are no grounds for reconsideration.

Plaintiff asks the court to vacate its prior judgment and enter a new one should his motion

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<sup>1</sup> References to (#XX) refer to the court's docket.

1 for reconsideration be denied. Plaintiff bases this request on the fact that neither party's counsel  
2 received a copy of the court's order as required by FRCP 77(d). The court finds no basis for such  
3 an action within FRCP 60(b). The only effect of such an action would be to reopen the period  
4 within which Plaintiff could appeal. Accordingly, the court will consider Plaintiff's request to  
5 constitute a motion for reopening the time to file an appeal pursuant to Federal Rule of Appellate  
6 Procedure (FRAP) 4(a)(6).

7 Under FRAP 4(a)(6) a district court may reopen the time to file an appeal for fourteen  
8 (14) days following the entry of its order to reopen if three factors are met. First, the court must  
9 find the moving party did not receive notice of the entry of the judgment sought to be appealed  
10 within twenty-one (21) days after entry. Fed. R. App. P. 4(a)(6)(A). Second, the motion must be  
11 filed within one hundred eighty (180) days after entry of the judgment or within seven (7) days  
12 after the moving party receives notice, whichever is earlier. *Id.* at 4(a)(6)(B). Third, the court  
13 must find that no party will be prejudiced by the reopening. *Id.* at 4(a)(6)(C).

14 The court has been notified that neither party received a copy of its previous order and  
15 that, upon learning of the order, Plaintiff promptly filed the pending motion. Also, the court sees  
16 no prejudice to either party in reopening the period for appeal for fourteen (14) days from the  
17 entry of this order. As neither side knew of the court's prior order, neither side is prejudiced by  
18 the court reopening the period for appeal.

19 It is therefore ORDERED that Plaintiff's motion for reconsideration (#39) is DENIED;

20 It is further ORDERED that the time to file an appeal in this matter be reopened for  
21 fourteen (14) days from the entry of this order, pursuant to FRAP 4(a)(6).

22 DATED this 11<sup>th</sup> day of April, 2007.

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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE